

# EXHIBIT A



CL16033095

FILED

2013 MAR -1 AM 9:54

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

13 4 00302 9

In the Matter of the Estate of )

NO.

RICHARD F. BUSS, )

ORDER ADMITTING WILL TO  
PROBATE AND CERTIFICATE OF  
TESTIMONY

Deceased. )

RCW 11.20.020, 11.28.185

The Application for Probate of Will of the above-named decedent has been presented on behalf of JANNETTE M. WEIMER, aka JANETTE M. WEIMER. The court finds:

1. Decedent died on February 8, 2013, a resident of Snohomish County, Washington, and left an estate subject to the jurisdiction of the court.

2. The decedent's Will dated January 31, 2005 (the "Will") was executed in accordance with RCW 11.12.020 by decedent, who had attained the age of majority and was of sound mind.

3. The Will provides that the personal representative to be appointed shall act without bond.

4. JANNETTE M. WEIMER, aka JANETTE M. WEIMER is qualified and willing to act as personal representative. JANNETTE M. WEIMER aka JANETTE M. WEIMER is not a resident of the State of Washington, and will appoint a Resident Agent.

Certificate and Order

IT IS ORDERED:

A. The testimony of PETER W. BENNETT and ANGELIA D. CHRISTENSEN reduced to writing and signed by them as witnesses is accepted as the testimony in support of the Will;

Order Admitting Will to Probate  
and Certificate of Testimony -1-

adc/clients/Buss-Richard Estate/order.doc/2/21/2013

BENNETT & BENNETT

ATTORNEYS AT LAW  
400 DAYTON, SUITE A  
EDMONDS, WASHINGTON 98020

(425) 776-0139

ORIGINAL

A-1

1 B. The offered Will is established as the last Will of decedent and admitted to  
2 probate;

3 C. JANNETTE M. WEIMER aka JANETTE M. WEIMER is appointed as personal  
4 representative of the Will to act without bond; and

5 D. The clerk of the court is authorized to issue Letters Testamentary evidencing the  
6 appointment of JANNETTE M. WEIMER aka JANETTE M. WEIMER as personal  
7 representative.

8 E. PETER W. BENNETT, Attorney at Law, WSBA #14267, is hereby approved as  
9 the designated Resident Agent for the Personal Representative.

10 DATED this \_\_\_\_ day of MAR 01 2013, 2013.

11  
12  
13   
14 Judge Court Commissioner  
15

16 Presented by: W. Bennett, WSBA #16130, For:

17  
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19

20 PETER W. BENNETT, WSBA #14267  
21 Attorney for Personal Representative  
22 400 Dayton, Suite A  
23 Edmonds, WA 98020  
24 (425) 776-0139  
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Order Admitting Will to Probate  
and Certificate of Testimony -2-  
adc/clients/Buss-Richard Estate/order.doc/2/21/2013

**BENNETT & BENNETT**  
ATTORNEYS AT LAW  
400 DAYTON, SUITE A  
EDMONDS, WASHINGTON 98020

(425) 776-0139

# EXHIBIT B

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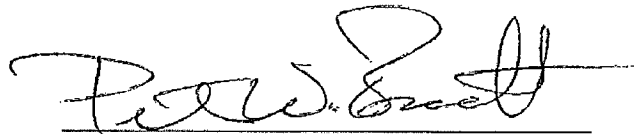
6 SONYA KRASKI  
7 COUNTY CLERK  
8 SNOHOMISH CO. WASH.

9 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
10 IN AND FOR THE COUNTY OF SNOHOMISH  
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12  
13 In the Matter of the Estate of ) NO. **13 4 00302 9**  
14 RICHARD F. BUSS, )  
15 Deceased. ) AFFIDAVIT OF PUBLICATION  
16 )  
17

18 Attached please find a copy of the Affidavit of Publication of Notice to Creditors in the  
19 above referenced estate.

20 DATED this 29 day of March, 2013.  
21

22  
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25 PETER W. BENNETT, WSBA #14267  
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**FILE COPY**

BENNETT & BENNETT  
ATTORNEYS AT LAW  
400 DAYTON, SUITE A  
EDMONDS, WASHINGTON 98020

B-3

### Legal Notice

IN THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON  
IN AND FOR THE  
COUNTY OF SNOHOMISH

In the Matter of the Estate of  
RICHARD F. BUSS,

Deceased.

NO. 13-4-00302-9

#### PROBATE NOTICE TO CREDITORS

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court. The claim must be presented within the later of: (1) Thirty days after the personal representative served or mailed the notice to the creditor as provided under RCW 11.40.020(3); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of first publication: 3/13/13

Date of Filing Notice with Clerk: 3/11/13

JANNETTE M. WEIMER,

aka Janette M. Weimer,

Personal Representative of the Estate

of Richard F. Buss

c/o Peter W. Bennett, 400 Dayton, Suite A

Edmonds, WA 98020

Peter W. Bennett, WSBA #14267

of Bennett & Bennett

400 Dayton Suite A

Edmonds, WA 98020

(425) 776-0139

Published March 13, 20 and 27, 2013

E8101

## AFFIDAVIT OF PUBLICATION

STATE OF WASHINGTON

ss.

COUNTY OF SNOHOMISH

Joanna Cole

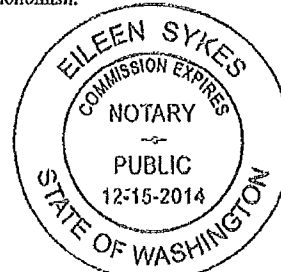
being first duly sworn on oath deposes and says that she is the principal clerk of The Tribune, a weekly newspaper. That said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County, and it is now, and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continually as a weekly newspaper in Snohomish, Snohomish County, Washington, and it is now, and was during all of said time, printed in an office maintained at the aforesaid place of publication of said newspaper.

That the annexed is true of a copy of a(n)

Richard F. Buss notice to creditors as it was published in regular issues (and not in supplemental form) of said newspaper once a week for a period of 3 consecutive weeks, commencing on the 13th day of March, 2013, and ending on the 27th day of March, 2013, both dates inclusive, and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is the sum of \$217.80 which amount has been paid in full, at the rate of \$13.20 per column inch.

Joanna Cole  
Subscribed as sworn to before me this 27th day of March 2013

Julian Sykes  
Notary Public in and for the State of Washington,  
residing in Snohomish.



# EXHIBIT C

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**FILED**

DEC 26 2013

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

In the Matter of the Estate of ) NO. 13-4-00302-9  
RICHARD F. BUSS, )  
Deceased. ) PERSONAL REPRESENTATIVE'S  
AFFIDAVIT

STATE OF Texas )  
COUNTY OF Tarrant ) ss

I, JANETTE M. WEIMER (aka Jaunette M. Weiner), as Personal Representative of the  
above-entitled estate being first duly sworn, on oath say:

In accordance with RCW 11.40.040, I have exercised reasonable diligence to discover,  
within the four-month time limitation (expiring on 7-13-2013), reasonably ascertained creditors  
of the deceased.

I have conducted a reasonable review of the deceased's correspondence, including  
correspondence received after the date of death, and financial records, including personal  
financial statements, loan documents, checkbooks, bank statements and income tax returns, that  
are in the possession of or reasonably available to the Personal Representative, and have made  
inquiry of the deceased's heirs, devisees, and legatees regarding claimants.

Personal Representative's Affidavit -1-  
adc/clients/Buss-Richard estate/PR-AFF.DOC/12/3/2013

**BENNETT & BENNETT**

ATTORNEYS AT LAW  
400 DAYTON, SUITE A  
EDMONDS, WASHINGTON 98020


(425) 776-0139

**FILE COPY**

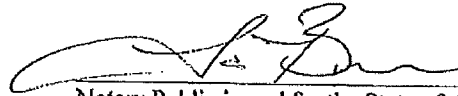


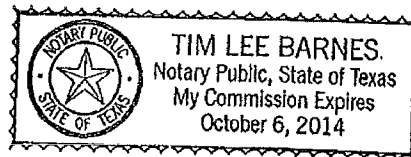
1 That no claims on the above captioned estate have been filed and served. Other bills of  
2 the estate have been paid without creditor's claims.  
3

4  
5 DATED this 16 day of December, 2013.  
6

7  
8   
9 JANETTE M. WEIMER, aka Jannette M.  
Weimer, Personal Representative  
10

11 SUBSCRIBED and SWORN to before me this 16<sup>th</sup> day of December,  
12 2013.  
13

14  
15   
16 Notary Public in and for the State of Texas  
17 Residing at 1700 E Southlake Blvd Southlake TX 76092  
18 My commission expires: Oct 6, 2014  
19



Personal Representative's Affidavit -2-  
adc/clients/Buss-Richard estate/PR-AFF.DOC/12/3/2013

BENNETT & BENNETT  
ATTORNEYS AT LAW  
400 DAYTON, SUITE A  
EDMONDS, WASHINGTON 98020  
(425) 776-0139

# EXHIBIT D

FILED

FEB 26 2014

SONYA KRASKI  
CLERK OF COURT  
SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY  
SNOHOMISH CO. WASH.

In the Matter of the Estate of  
Richard F. Buss,  
Deceased.

NO. 13-4-00302-9

CREDITOR'S CLAIM OF MICHAEL  
KLEIN, CHAPTER 7 TRUSTEE FOR  
THE BANKRUPTCY ESTATES OF  
THE McNAUGHTON GROUP, LLC  
AND MARK AND MARNA  
McNAUGHTON

RCW 11.40.070

1. Claim.

a. Claimant: Michael Klein, Chapter 7 Trustee for the Bankruptcy Estates of The  
McNaughton Group, LLC and Mark and Marna McNaughton (Lead Case No. 12-11906-  
KAO).

Address: 755 Winslow Way E., Suite #201 Bainbridge Island, WA 98110

b. If claim is signed on behalf of the claimant:

Name of signer: Manish Borde of Williams, Kastner & Gibbs, PLLC  
Address of signer: 601 Union Street, Suite 4100, Seattle, WA 98101-2380

Nature of authority: Counsel for Michael Klein, Chapter 7 Trustee

CREDITOR'S CLAIM OF MICHAEL KLEIN, CHAPTER  
7 TRUSTEE - 1

4653086.1

Williams, Kastner & Gibbs PLLC  
Two Union Square, Suite 4100 (98101-2380)  
Mail Address: P.O. Box 21926  
Seattle, Washington 98111-3926  
(206) 628-6600

WILLIAMS, KASTNER & GIBBS PLLC

*Manish Borde*

Manish Borde, WSBA #39503

Attorneys for Michael Klein, Chapter 7 Trustee for the  
Bankruptcy Estates of The McNaughton Group, LLC and  
Mark and Marna McNaughton

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Phone: (206) 628-6600 Fax: (206) 628-6611

Email: [mborde@williamskastner.com](mailto:mborde@williamskastner.com)

c. Statement of facts or circumstances constituting the basis upon which claim is submitted:

See attached Complaint.

d. Amount of claim: No less than \$122,028.30

e. If claim is secured, unliquidated or contingent, or not yet due, statement of nature of security, statement of the uncertainty and due date of claim

N/A

[CLAIMANT]

2. Service. Receipt of the claim is acknowledged on \_\_\_\_\_, 2014.

3. Allowance by Personal Representative.

☐ The claim is allowed for \$ \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

☐ The claim is rejected on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[name], Personal Representative

CREDITOR'S CLAIM OF MICHAEL KLEIN, CHAPTER  
7 TRUSTEE - 2

4653086.1

Williams, Kastner & Gibbs PLLC  
Two Union Square, Suite 4100 (98101-2380)  
Mail Address: P.O. Box 21926  
Seattle, Washington 98111-3926  
(206) 628-6600

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**CERTIFICATE OF SERVICE**

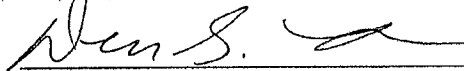
I hereby certify that on the 26th day of February, 2014, I caused to be filed the foregoing with the Clerk of the Court, Snohomish County Superior Court.

Further, I hereby certify under penalty of perjury of the laws of the State of Washington that on the below date, I caused to be hand delivered via Legal Messenger a true and correct copy of the foregoing to the following:

Peter W. Bennett  
BENNETT & BENNETT  
Attorneys at Law  
400 Dayton, Suite A  
Edmonds, WA 98020  
Telephone: (425) 776-0139

☒ Hand Delivery  
Via ABC Legal Messenger

DATED this 26th day of February, 2014.



Dena S. Levitin, Legal Assistant to  
Manish Borde, WSBA #39503  
WILLIAMS, KASTNER & GIBBS PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Phone: (206) 628-6600 Fax: (206) 628-6611

CREDITOR'S CLAIM OF MICHAEL KLEIN, CHAPTER  
7 TRUSTEE - 3

4653086.1

Williams, Kastner & Gibbs PLLC  
Two Union Square, Suite 4100 (98101-2380)  
Mail Address: P.O. Box 21926  
Seattle, Washington 98111-3926  
(206) 628-6600

# **ATTACHMENT**

1 Scott B. Henrie, WSBA #12673  
2 Manish Borde, WSBA #39503  
3 WILLIAMS, KASTNER & GIBBS PLLC  
4 601 Union Street, Suite 4100  
5 Seattle, WA 98101-2380  
6 Telephone: (206) 628-6600  
7 Fax: (206) 628-6611  
8 Attorneys for Michael P. Klein, Chapter 7  
9 Trustee

The Honorable Karen A. Overstreet  
Chapter 7

10 UNITED STATES BANKRUPTCY COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE

13 IN RE:  
14 MARK ALLEN McNAUGHTON and MARNA  
15 LOUISE McNAUGHTON,  
16 Debtors.

17 IN RE:  
18 THE McNAUGHTON GROUP, LLC  
19 Debtor.

20 MICHAEL P. KLEIN, CHAPTER 7 TRUSTEE  
21 FOR THE BANKRUPTCY ESTATE OF THE  
22 McNAUGHTON GROUP, LLC

23 Plaintiff,

24 v.

25 JANNETTE M. WEIMER, Personal  
Representative of the Estate of Richard F. Buss;  
JANE DOE BUSS, individually and on behalf  
of her marital community,

Defendants.

Lead Case No. 12-11906 KAO  
Member Case No. 12-12823 KAO  
(administratively consolidated)

Adv. No. \_\_\_\_\_

COMPLAINT TO QUIET TITLE, FOR  
DECLARATORY RELIEF AND TO  
AVOID AND RECOVER TRANSFERS  
UNDER BANKRUPTCY CODE  
SECTIONS 544, 547, 548, 549, 550 AND  
RCW 19.40 ET SEQ.

Michael P. Klein ("Trustee"), in his capacity as Chapter 7 Trustee of the Bankruptcy  
Estate of The McNaughton Group, LLC, by and through his attorneys, Williams, Kastner &  
Gibbs PLLC, for the benefit of creditors of the above-captioned Bankruptcy Estate, seeks to

COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF  
AND TO AVOID AND RECOVER TRANSFERS UNDER  
BANKRUPTCY CODE SECTIONS 544, 547, 548, 549, 550 AND  
RCW 19.40 ET SEQ. - 1

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601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

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1 avoid both the preferential and subsequent transfers of the avoidable transfers of the Debtor's  
2 property to or for the benefit of Richard Buss ("Buss").

3 I. JURISDICTION AND VENUE

4 1.1 This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (C), (E), (F)  
5 (H), (K) and (O).

6 1.2 This Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. § 157(a)  
7 and (b), 28 U.S.C. § 1334(a) and (b), and 11 U.S.C. § § 105, 544, 547, 548, 549, 550 and 551.  
8 A creditor's claim was filed in Snohomish County Superior Court on or about February 26,  
9 2014.

10 1.3 This matter has been referred to the Bankruptcy Judges of the District pursuant  
11 to General Rule 7 of the Rules for the United States District Court for the Western District of  
12 Washington.

13 1.4 Venue is proper under 28 U.S.C. § 1409.

14 II. PARTIES

15 2.1 Debtor. Mark and Marna McNaughton (the "McNaughtons") are a married  
16 couple who reside in Edmonds, Washington, and filed for Chapter 7 bankruptcy protection on  
17 February 28, 2012. Michael Klein was appointed trustee. On March 21, 2012, Mr. Klein filed  
18 a voluntary Chapter 7 bankruptcy petition on behalf of The McNaughton Group, LLC  
19 ("Debtor" or "TMG"). The McNaughtons' personal bankruptcies and The McNaughton Group  
20 bankruptcy were consolidated for administration purposes pursuant to this Court's August 6,  
21 2013 Order.<sup>1</sup>

22  
23  
24  
25 <sup>1</sup> Dkt. #145.



2.2 Trustee. Michael Klein is the Chapter 7 Trustee of the above captioned proceeding. The trustee is authorized to bring this action pursuant to 11 U.S.C. § § 105, 544, 547, 548, 550 and 551, and does so solely in his capacity as trustee for TMG.

2.3 Defendant Jannette M. Weimer. Ms. Weimer is the personal representative of the probate estate of Richard F. Buss. Ms. Weimer is a Washington resident. The Buss estate is currently in probate in Snohomish County Superior Court Case No. 13-4-00302-9. The Trustee filed a claim in the probate estate on or about February 26, 2014. Buss filed a claim in The McNaughton Group, LLC (“TMG”) bankruptcy proceeding.<sup>2</sup> Buss worked at TMG prior to working at KLN Construction, Inc. (“KLN”), which was formed in 2010. The Buss probate estate has, following the death of Mr. Buss, received payments arising out of an alleged security interest held by Mr. Buss in an asset of TMG.

2.4 Defendant Jane Doe Buss. Jane Doe Buss is the wife of Richard Buss and together they formed a marital community. Any and all acts by Richard Buss were done for the benefit of the marital community. Any acts that benefitted Richard Buss benefitted the marital community.

### III. FACTS

## A. Background

3.1 TMG was formed in 1997 by Mark and Marna McNaughton for the purpose of developing real estate. Mark and Marna McNaughton were the sole members of TMG at the time of formation, and remained the sole members of TMG at the time of the TMG bankruptcy. Mark McNaughton was the President and CEO of TMG.

3.2 Mark and Marna were also the sole members of several other LLCs through which they conducted real estate development business. To add to the complexity, TMG was

<sup>2</sup> Claim #7.

COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF  
AND TO AVOID AND RECOVER TRANSFERS UNDER  
BANKRUPTCY CODE SECTIONS 544, 547, 548, 549, 550 AND  
RCW 19.40 ET SEQ. - 3

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

1   itself a sole member of several more LLCs through which the McNaughtons also conducted  
2   business.

3           3.3     Richard Buss was an officer or high level employee of TMG and exerted at least  
4   some control over TMG.

5           3.4     Richard Buss was an insider of TMG.

6           3.5     As part of his employment, and acknowledging his standing as a key employee,  
7   the McNaughtons, TMG and Buss entered into a profit sharing agreement. Buss earned a  
8   bonus for the calendar year 2006 pursuant to TMG's profit sharing plan, which was to be paid  
9   on February 28, 2007.

10          3.6     A portion of Buss' 2006 bonus was paid on or about February 28, 2007. The  
11   remainder of Buss' 2006 bonus was evidenced by a promissory note executed by TMG dated  
12   March 1, 2007.

13          3.7     The March 1, 2007 promissory note in favor of Buss was for the principal  
14   amount of \$542,565.74.

15          3.8     The March 1, 2007 promissory note was due and payable on October 31, 2007.

16          3.9     The note accrued interest at the rate of one percent greater than the prime rate,  
17   adjusted on a monthly basis.

18          3.10    On February 26, 2009, Vien Bui and Thanh-Thien Tonnu filed a lawsuit against  
19   TMG seeking \$100,000 in damages.

20          3.11    On March 16, 2009, David Hawes filed a lawsuit against TMG seeking \$20,000  
21   in damages.

22          3.12    On October 12, 2009, Frontier Bank and Union Bank filed a lawsuit against The  
23   McNaughton Group, LLC, the McNaughtons and other McNaughton entities seeking  
24   \$17,695,170.72 in damages from TMG and \$27,264,551.36 from the McNaughtons.

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COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF  
AND TO AVOID AND RECOVER TRANSFERS UNDER  
BANKRUPTCY CODE SECTIONS 544, 547, 548, 549, 550 AND  
RCW 19.40 ET SEQ. - 4

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

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1           3.13   In 2007 Traner/Traner Smith & Co., PLLC, prepared an amended tax return for  
2 TMG LLC for the 2006 tax year. That amended return was prepared negligently in that it  
3 contained a critical error. In that tax return, Traner claimed a tax deduction or write-off on the  
4 value of the real property underpinning a failed real estate venture which the McNaughtons still  
5 owned and that the McNaughtons still controlled through an LLC created for that purpose.  
6 This improper deduction flowed into the McNaughtons' personal tax returns as the sole  
7 members of TMG LLC.

8           3.14   As an actual or proximate result of this error the McNaughtons carried back  
9 improper losses in the 2007 tax year and obtained a substantial refund of 2006 taxes already  
10 paid, resulting in a potential \$6 million tax underpayment and resulting liability for taxes,  
11 interest and penalties.

12           3.15   The McNaughtons received a tax refund from the IRS in 2010 and paid  
13 \$250,000 from the refund to Buss and others in 2010.

14           3.16   At some point in 2010, Traner revealed his error and the Debtors' possible  
15 exposure should the IRS investigate the refunds claimed based upon Traner's error.

16           3.17   KLN, formed in 2010, is a successor to TMG. KLN is named after the initials  
17 of the McNaughton's children and, though he has no official employment, Mark McNaughton  
18 serves officially as an advisor to KLN.

19           3.18   Buss became the Chief Financial Officer of KLN.

20           3.19   Both the McNaughtons and TMG made assignments of various real estate  
21 projects to KLN in the 2010 timeframe regardless of whether they were owned directly by the  
22 McNaughtons or by the McNaughtons through their ownership of TMG.

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COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF  
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RCW 19.40 ET SEQ. - 5

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

4653435.2

1 B. The Assets.

2 3.20 In September 2008, one of the LLC's wholly-owned by the McNaughtons, Bear  
3 Creek Highlands, LLC, ("Bear Creek") sold approximately thirty (30) acres of real property  
4 located in Snohomish County, Washington to the Everett School District for a potential future  
5 school site. The Everett School District paid \$4,660,000 of the purchase price in the form of  
6 school mitigation credits granted to Bear Creek.

7 3.21 The school mitigation credits can be applied against school mitigation fees  
8 imposed on development proposals within the Everett School District's boundaries for a twenty  
9 (20) year period.

10 3.22 The school mitigation credits were originally owned by Bear Creek but were  
11 transferred to TMG for little or no consideration. TMG subsequently transferred the mitigation  
12 credits to KLN for little or no consideration.

13 3.23 TMG constructed a sewer lift station at approximately 180<sup>th</sup> Street SE and  
14 Sunset Road for use by the Silver Lake Water and Sewer District ("Silver Lake"). Pursuant to  
15 an October 7, 2009 Latecomers' Agreement with Silver Lake, TMG is entitled to "latecomers'  
16 fees" collected from the owners of properties that are benefited by and connect to the lift  
17 station constructed by TMG (the "Latecomer's Fees").

18 C. The Transfers.

19 3.24 On January 22, 2010, Buss entered into an agreement titled "2006 Bonus  
20 Payment and Employee Promissory Note Amendment Agreement" (the "2010 Agreement").  
21 At that time, the original March 1, 2007 promissory notes executed in favor of Buss was in  
22 default.

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COMPLAINT TO QUIET TITLE, FOR DECLARATORY RELIEF  
AND TO AVOID AND RECOVER TRANSFERS UNDER  
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1           3.25   As of January 22, 2010, the outstanding principal balances for the March 1,  
2 2007 promissory note in favor of Buss (due and payable on October 31, 2007) was  
3 \$392,565.74.

4           3.26   Pursuant to the 2010 Agreement, the McNaughtons paid \$50,000, a portion of a  
5 tax refund received from the IRS, to Buss to reduce the debt owed to Buss under the 2006  
6 bonus agreement.

7           3.27   Also pursuant to the 2010 Agreement, TMG agreed to provide additional  
8 security for payment of the outstanding principal balance due under the March 1, 2007  
9 promissory note in the form of security interests in the school mitigation credits and  
10 Latecomer's Fees. The 2010 Agreement provided in part:

11  
12           2.1    180<sup>th</sup> Street Lift Station Latecomers' Fees. The Employees shall be  
13 provided the latecomers' fees as security for the obligations under this  
14 Agreement, and the Parties shall execute all other documents deemed  
15 reasonable or necessary to effectuate such security interest . . . .

16           ...  
17           b. Any future proceeds from the latecomer fees would be distributed 50% to  
18 TMG and 50% to Employees in exchange for the Employee's release of their  
19 security interest in such distributed proceeds.

20           c. TMG and Employees agree that at any time the latecomer's agreement may  
21 be assigned, transferred, or entered into in the name of a new LLC entity to be  
22 formed [NewLLC], provided, that the Employee's security interest in the  
23 latecomer's fees shall be assigned to and assumed by such transferee.

24           2.2    Everett School District Impact Mitigation Fee Credits. The Employees  
25 shall be provided the Impact Fee Credits as security for the obligations under  
this Agreement, and the Parties shall execute all other documents deemed  
reasonable or necessary to effectuate such security interest . . . .

...  
b. Any future proceeds from the sale of Impact Fee Credits by TMG to third  
parties shall be distributed 50% to TMG and 50% to Employees in exchange for  
the Employees' release of their security interest in such distributed proceeds.

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1 c. TMG and Employees agree that at any time the Impact Fee Credits may be  
2 assigned, transferred or entered into the name of a new LLC entity to be formed  
3 [NewLLC], provided, that the Employee's security interest in the latecomers'  
4 fees shall be assigned to and assumed by such transferee.

5 3.28 Concurrent with the January 22, 2010 execution of the 2010 Agreement, two  
6 security agreements were executed. In one security agreement, TMG granted a security  
7 interest in favor of Buss in 50% of the proceeds from any future sale of the school mitigation  
8 credits (the "2010 Credits Security Agreement"). In the other security agreement, TMG  
9 granted a security interest in favor of Buss in 50% of the proceeds from any future collection of  
10 the Latecomer's Fees (the "2010 Latecomer's Fees Security Agreement").

11 3.29 Both the 2010 Credits Security Agreement and 2010 Latecomer's Fees Security  
12 Agreement contain the following provision:

13 5.9 No Impairment of Obligations. Until the Employee Promissory Notes  
14 have been paid in full, Debtor will not make any agreement which is  
15 inconsistent with its Obligations, nor sell, lease, or otherwise dispose of the  
16 Collateral (or any other material assets, if such assets are not also included as  
17 Collateral), other than in the ordinary course of business, unless Debtor has  
18 obtained the prior written consent of Secured Party, which consent will not be  
19 withheld unreasonably. Secured Party may, as a condition of giving consent,  
20 require that all or part of the proceeds be applied to the Notes as a prepayment.

21 3.30 No UCC-1 Financing Statement perfecting the security agreements was filed  
22 within 30 days of the security agreements being signed, nor prior to 2011.

23 3.31 On September 30, 2010, TMG and KLN signed an agreement titled Assignment  
24 and Assumption of Interest in School Mitigation Credits ("Credits Assignment Agreement").  
25 Under the terms of the Credits Assignment Agreement, TMG transferred its right, interest and  
title to the school mitigation credits to KLN.

3.32 Paragraph 2.2 of the School Mitigation Credits Assignment Agreement provides  
for the assignment to KLN of all of TMG's rights, duties and obligations in and to the 2010

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1 Credits Security Agreement, with the exception of TMG's obligations to pay the March 1,  
2 2007 employee promissory note.

3 Subject to the terms of this Assignment, [KLN] hereby assumes the rights,  
4 duties and obligations of TMG as the "Debtor" under the Security Agreement;  
5 **provided, however**, that nothing in this Agreement shall constitute an  
6 assignment to [KLN] of [TMG]'s obligation to pay the Employee Promissory  
7 Notes . . . and the parties acknowledge and agree that the assignment of the  
8 Security Agreement is for purposes of continuing to provide the School  
9 Mitigation Credits as additional security pursuant to Section 2 of the [2010  
10 Agreement].

11 3.33 In exchange for TMG's transfer to KLN of all of TMG's right, title and interest  
12 in the school mitigation credits, KLN agreed to pay 50% of any proceeds derived by KLN from  
13 the sale of the school mitigation credits to third parties after payment of any amounts due to  
14 Buss under Paragraph 2.2a of the 2010 Agreement.

15 3.34 Prior to the execution of the Credits Assignment Agreement: (a) TMG received  
16 100% of the proceeds derived from the sale of the school mitigation credits; (b) TMG had a  
17 contractual obligation to Buss to pay 50% of those proceeds to the Buss; (c) TMG was liable  
18 on the March 1, 2007 promissory note; and (d) Buss had an unperfected security interest in  
19 50% of the school mitigation credits.

20 3.35 After the execution of the Credits Assignment Agreement: (a) TMG received  
21 25% of the proceeds derived from the sale of the school mitigation credits; (b) KLN received  
22 75% of the proceeds derived from the sale of the school mitigation credits; (c) KLN had a  
23 contractual obligation to TMG to pay Buss 50% of the school mitigation credits but had no  
24 obligation to Buss; (d) TMG was still liable on the March 1, 2007 promissory note owing to  
25 Buss; and (e) Buss had an unperfected security interest in the school mitigation credits.

3.36 On March 22, 2011, a UCC-1 financing statement, listing KLN as the debtor,  
was filed purporting to perfect Buss' security interest in the school mitigation credits that had  
been transferred to KLN.

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1           3.37   On that same day, a UCC-1 financing statement was filed purporting to perfect  
2 Buss' security interest in the Latecomer's Fees listing TMG as the debtor and Buss as the  
3 secured creditor.

4           3.38   On July 1, 2011, the Everett School District, TMG and KLN entered into the  
5 First Amendment to the Agreement Regarding Dedication of Land as School Impact Mitigation  
6 (the "July 2011 Amendment"). The July 2011 Amendment memorialized the transfer of the  
7 school mitigation credits from TMG to KLN, and the Everett School District's knowledge and  
8 approval of that transfer.

9           3.39   On March 12, 2012 another UCC-1 was filed reflecting KLN's ownership in the  
10 school mitigation credits. The UCC-1 was then amended that same day in still another filing to  
11 attach the July 2011 Amendment.

12           3.40   According to the Debtor's records, the following payments were made to Buss  
13 prior to the TMG bankruptcy petition date:

14	04/01/2010	Buss- note payment/int	6,200.43
15	05/01/2010	Note payment - Buss	6,144.24
16	05/01/2010	A/P-Check	142.34
17	06/01/2010	INT AND NOTE PMT-BUSS	6,164.33
18	07/01/2010	BUSS INT/NOTE PYMT	6,109.30
19		Buss int and note	
20	08/02/2010	payment	6,128.23
21	09/01/2010	BUSS INT NOTE	6,110.19
22	10/04/2010	BUSS INT AND NOTE	6,056.91
23	11/01/2010	BUSS INT AND NOTE PMT	3,574.09
24	02/01/2011	INT - BUSS	1,065.07
25		BUSS - INT ON NOTE	962.00

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03/01/2011		
04/01/2011	BUSS-INT ON NOTE	1,065.07
05/19/2011	INT ON NOTE-BUSS	1,030.71
06/01/2011	A/P Check	1,065.07
07/01/2011	A/P Check	1,030.71
08/01/2011	A/P Check	1,065.07
09/01/2011	A/P Check	1,065.07
10/01/2011	A/P Check	1,013.95
11/01/2011	A/P Check	1,035.52
		<u>57,028.30</u>

3.41 On March 21, 2012, TMG filed for voluntary Chapter 7 bankruptcy protection.

3.42 The Trustee anticipates additional transfers to Buss and the Defendant will be revealed during discovery, including but not limited to post-petition transfers in the amount of \$60,000.

3.43 Richard Buss, among other former high level employees of TMG, filed a proof of claim in the TMG bankruptcy proceeding. Upon information and belief, Buss had communicated with the other former high level employees regarding the TMG bankruptcy and its impact.

3.44 Claim Number 7 in the TMG bankruptcy was filed by Richard Buss on or about July 24, 2012.

3.45 Richard Buss asserted a secured claim in the amount of \$275,250 relating to "Note for past wages".

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1           3.46   Richard Buss' Claim asserts that the basis for the perfection of his purported  
2 security interest was a "Security agreement".

3                               IV. FIRST AND SECOND CAUSES OF ACTION  
4                               RCW 19.40.051 AND 11 U.S.C. § 547

5           4.1    All transfers from TMG to Buss after March 21, 2011, including each of the  
6 March 22, 2011 filings of the UCC-1 financing statements ostensibly perfecting the security  
7 interest in the school mitigation credits and Latecomer's Fees, and each payment of interest or  
8 principal by TMG to Buss and/or KLN were constructively fraudulent as to creditors whose  
9 claims arose before the transfer was made and is avoidable by the trustee because the transfers  
10 were made to an insider for an antecedent debt and the debtor was insolvent at the time of the  
11 transfers. TMG had reasonable cause to believe that it was insolvent and that knowledge is  
12 attributable to Buss.

13           4.2    Buss was closely related to TMG and his close relationship provided an  
14 advantage to Buss as opposed to other creditors. The transfers identified were not conducted at  
15 arm's length.

16           4.3    All transfers from TMG to Buss after March 21, 2011, including each of the  
17 March 22, 2011 filings of the UCC-1 financing statements ostensibly perfecting the security  
18 interest in the school mitigation credits and Latecomer's Fees, and each payment of interest or  
19 principal by TMG to Buss and/or KLN were transfers made to insiders of TMG within one  
20 year before the March 21, 2012 filing of the TMG bankruptcy petition.

21           4.4    The transfers made to Buss and/or KLN within the year prior to the filing of  
22 TMG's bankruptcy petition were transfers: (a) of interests in Debtor's property; (b) to Buss; (c)  
23 made on account of an antecedent debt owed by TMG to Buss; (d) made at a time when Debtor  
24 was insolvent; and (e) if validated would enable Buss to receive more than they would have  
25

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1 received had the transfers not been made and had Buss otherwise received distributions from  
2 the estate pursuant to the Bankruptcy Code.

3 4.5 Payments made within the 90 day preference period to Buss are subject to  
4 avoidance as preferences under 11 U.S.C. § 547.

5 V. THIRD AND FOURTH CAUSES OF ACTION  
6 RCW 19.40.041(A)(1) AND 11 U.S.C. § 548(A)(1)(A)

7 5.1 The transfers made by the debtor to Buss after March 22, 2010, including the  
8 granting of a security interest in the school mitigation credits and the Latecomer's Fees, the  
9 subsequent filing of any financing statements, and any payments of interest and/ or principal,  
10 are avoidable under RCW 19.40.041 and/ or 11 USC § 548(a)(1)(A).

11 5.2 The transfers made and the obligations incurred by the debtor were done with  
12 actual intent to hinder, delay, or defraud a creditor of the debtor, the transfers and obligations  
13 were directly or indirectly to or for the benefit of Buss.

14 5.3 The Debtor had been sued or anticipated being sued prior to the transfers.

15 5.4 TMG was insolvent; it had previously ostensibly transferred significant assets  
16 into KLN, a related entity.

17 5.5 The value of the consideration received by the debtor from Buss in exchange for  
18 the ostensible transfers was not equivalent to the value of the assets transferred or the amount  
19 of the obligation incurred by the debtor.

20 VI. FIFTH AND SIXTH CAUSES OF ACTION  
21 RCW 19.40.041(A)(2) AND 11 U.S.C. § 548(A)(1)(B)

22 6.1 The transfers made by the debtor to Buss after March 22, 2010, including the  
23 granting of a security interest in each of the school mitigation credits and the Latecomer's Fees,  
24 the subsequent filing of any financing statements, and any payments of interest and/ or  
25 principal, are avoidable under RCW 19.40.041 and 11 U.S.C. § 548(a)(1)(B).

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6.2 All the transfers made and obligations incurred by the debtor to Buss and KLN were fraudulent as to creditors, whether the creditors' claim arose before or after the transfers were made or the obligations were incurred.

6.3 The debtor made the transfers and/ or incurred the obligations without receiving a reasonably equivalent value in exchange for the transfers or obligations and the debtor believed or reasonably should have believed that he already owed, or would incur, debts beyond his ability to pay as they became due.

6.4 The debtor had ostensibly transferred significant assets to KLN in 2010.

6.5 The debtor was insolvent at all times pertinent hereto.

6.6 The debtor's continued development of property could not be sustained with its remaining assets.

6.7 The debtor continued to incur debts that were beyond the debtor's ability to pay.

6.8 The granting of a security interest in the school mitigation credits and Latecomer's Fees, and subsequent perfection of that security interest, were made to benefit Buss pursuant to a profit sharing employment contract outside the ordinary course of business.

6.9 It is anticipated that discovery may reveal additional voidable transfers.

VII. SEVENTH CAUSE OF ACTION – RECOVERY OF AVOIDED TRANSFERS (11 U.S.C. § 550)

7.1 Plaintiff realleges paragraphs 1.1 through 6.8.

7.2 Buss and Ms. Weimer as the Personal Representative for the Buss probate estate are the “initial transferees” of the transfers identified in the foregoing paragraphs, as that phrase is used in 11 U.S.C. § 550(a)(1).

7.3 Alternatively, Buss and Ms. Weimer as the Personal Representative for the Buss probate estate are the subsequent transferees of the transfers identified in the foregoing paragraphs, including without limitation the transfers to KLN.

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1           7.4     Unless otherwise determined after a trial, pursuant to 11 U.S.C. § 550(a),  
2 Plaintiff is entitled to recover from Ms. Weimer as the Personal Representative for the Buss  
3 probate estate the sum total of the transfers made to Buss and Buss' probate estate and/or the  
4 interests transferred, plus interest thereon to the date of payment and the costs of this action.

5           VIII. EIGHTH AND NINTH CAUSES OF ACTION – QUIET TITLE AND  
6           DECLARATORY RELIEF REGARDING VALIDITY OF PERFECTION OF SECURITY  
7           INTERESTS IN SCHOOL MITIGATION CREDITS

8           8.1     Plaintiff realleges paragraphs 1.1 through 7.3.

9           8.2     A security interest is an interest in personal property which secures the payment  
10 or performance of an obligation.

11           8.3     A security interest is unenforceable where there is no underlying debt.

12           8.4     TMG granted a security interest in favor of Buss for the purpose of securing  
13 TMG's obligations under the March 1, 2007 employee promissory note.

14           8.5     Paragraph 2.2 of the School Mitigation Credits Assignment Agreement  
15 expressly provides that the obligations of TMG under the March 1, 2007 employee promissory  
16 note were not transferred to KLN under the School Mitigation Credits Assignment Agreement.

17           8.6     TMG and not KLN is the debtor with respect to the March 1, 2007 employee  
18 promissory notes and the interests in the school mitigation credits that secure the March 1,  
19 2007 obligation.

20           8.7     Perfection of a security interest in the school mitigation credits required the  
21 filing of a financing statement that identified the debtor as TMG. RCW 62A.9A-503.

22           8.8     No valid UCC-1 financing statement was ever filed by Buss with respect to the  
23 school mitigation credits since: (a) TMG, and not KLN, was liable on the March 1, 2007  
24 employee promissory note; (b) the obligation secured by the interests in the school mitigation  
25 credits (and Latecomers' fees) was the March 1, 2007 employee note obligation; and (c) the

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1 March 22, 2011 UCC-1 financing statement identifies "KLN Construction, Inc." as the debtor  
2 and not TMG.

3 8.9 Buss failed to perfect his security interests in the school mitigation credits.

4 8.10 Alternatively, in Washington, fraudulent transfers are voidable and not void *ab*  
5 *initio*. A security interest that is perfected after the fraudulent transfer of property does not  
6 automatically attach to that property. The first creditor to file an action to avoid the fraudulent  
7 transfer takes priority in the fraudulently transferred property. The trustee is entitled to assert  
8 the right of that hypothetical first creditor.

9 8.11 Alternatively, the school mitigation credits were fraudulently transferred to  
10 KLN prior to Buss' perfection of his security interests in the school mitigation credits.

11 8.12 Klein, in his capacity as the Chapter 7 Trustee for the bankruptcy estate of TMG  
12 and a hypothetical lien creditor, is the first creditor to file an action to avoid the transfers to  
13 KLN and as such has superior right, title and interest in the fraudulently transferred property  
14 over Buss.

15 IX. TENTH CAUSE OF ACTION – OBJECTION TO AND DISALLOWANCE OF CLAIM

16 9.1 Plaintiff realleges paragraphs 1.1 through 8.12.

17 9.2 The security interests asserted by Buss were never perfected under Washington  
18 law.

19 9.3 To the extent Buss received a perfected security interest in the assets of TMG,  
20 the receipt of such perfected security interests was a result of avoidable transfers and Buss'  
21 claim is disallowable pursuant to 11 U.S.C. § 502(d).

22 9.4 Buss has failed to provide any basis for a perfected secured claim against TMG.

23 9.5 Alternatively, the claim asserted by Buss is not secured against property of the  
24 Debtor.

25  
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1 X. ELEVENTH CAUSE OF ACTION – 11 U.S.C. § 549.

2 10.1 Plaintiff realleges paragraphs 1.1 through 9.5.

3 10.2 Upon information and belief, the Buss probate estate has received \$65,000 in  
4 transfers.

5 10.3 All transfers occurring after the Debtor's bankruptcy to Buss and Ms. Weimer  
6 as Personal Representative were transfers not authorized under the Bankruptcy Code or by this  
7 Court.

8 10.4 These transfers are therefore post-petition transfers and Plaintiff is entitled to  
9 avoid the post-petition transfers under 11 U.S.C. § 549.

10 XI. PRAAYER FOR RELIEF

11 Having alleged causes of action to avoid transfers from the debtor to or for the benefit  
12 of Buss, plaintiff PRAYS FOR RELIEF as follows:

13 11.1 For avoidance of the transfers identified and for such other voidable transfers as  
14 are identified through discovery;

15 11.2 For a judgment in the amount of the voidable transfers initially received by Buss  
16 and Ms. Weimer as the Personal Representative for the Buss probate estate as a result of these  
17 transfers;

18 11.3 For an order preserving all transfers avoided hereunder for the benefit of the  
19 Estate;

20 11.4 For judgment declaring that Buss failed to validly perfect his security interests  
21 in the school mitigation credits;

22 11.5 For an order disallowing Claim Number 7;

23 11.6 For such other and further damages and equitable relief as is allowed under 11  
24 U.S.C. § 550, and as the Court deems just and appropriate.

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1 DATED this \_\_\_\_ day of February, 2014.

2  
3 s/  
4 Scott B. Henrie, WSBA #12673  
5 Manish Borde, WSBA #39503  
6 Attorneys for Michael P. Klein, Chapter 7 Trustee  
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# EXHIBIT E

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SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

In the Matter of the Estate of

RICHARD F. BUSS,

Deceased.

No. 13-4-00302-9

**PETITION FOR ORDER RE  
REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S  
CREDITORS (RCW 11.40.040(3))**

Hearing Date: Friday, May 16, 2014

Hearing Time: 9:30 a.m.

I, JANETTE M. WEIMER (aka Jannette M. W. Weimer), in accordance with RCW 9A.72.085, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge.

1. **Personal Representative.** I am the Personal Representative of the Estate of Richard F. Buss (the "Buss Estate").

2. **Probate Notice to Creditors.** On March 13, 2013, I published a *Probate Notice to Creditors* in The Tribune, a newspaper that has been approved as a legal newspaper by order of the Superior Court of Snohomish County. Thereafter, on December 4, 2013, I caused to be filed an *Affidavit of Publication*, confirming that the Probate Notice to Creditors was published for more than six months.

3. **Reasonable Review of Decedent's Correspondence & Financial Records.** Shortly after my appointment, I reasonably and diligently reviewed Decedent's correspondence (including correspondence received after date of death) and financial records (including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns) that

PETITION FOR ORDER RE REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S CREDITORS (RCW 11.40.040(3)) - 1

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51360443.1

1 were in my possession or reasonably available to me. Based on this review, I made a list of each  
2 possible creditor of Decedent.

3 4. **Personal Representative's Affidavit.** On December 26, 2013, I caused to be  
4 filed an Affidavit confirming that, in accordance with RCW 11.40.040, I exercised reasonable  
5 diligence to discover within the four-month time limitation (expiring on July 13, 2013) all  
6 reasonably ascertainable creditors of Decedent.

7 5. **Expiration of Creditor's Claim Statute of Limitations Period.** Over fourteen  
8 months have passed since the first date of publication of my *Probate Notice to Creditors* on  
9 March 13, 2013, so the Statute of Limitations as regards filing a Creditor's Claim against the  
10 estate has expired.


11 **WHEREFORE**, based on the foregoing, I request an order:

12 1. Declaring that as the Personal Representative of the Buss Estate, I have made a  
13 reasonable review of Decedent's correspondence and financial records to ascertain Decedent's  
14 creditors;

15 2. Determining that any creditor of Decedent not now known to me is not reasonably  
16 ascertainable, and;

17 3. Terminating the rights against the Buss Estate of all creditors not named in  
18 Paragraph 3 above.

19 DATED: April 14, 2014

20   
21 JANNETTE M. WEIMER  
(aka Jannette M. W. Weimer)

22  
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24  
25  
26  
PETITION FOR ORDER RE REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S CREDITORS (RCW 11.40.040(3)) - 2

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

# **EXHIBIT F**

1  
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7 SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY  
8 IN THE MATTER OF THE ESTATE OF  
9 RICHARD F. BUSS,  
10 Deceased.

No. 13-4-00302-9

**NOTICE OF AFFIDAVIT OF  
PUBLICATION**

11 Attached here is a true and correct copy of the Affidavit of Publication for the Petition for  
12 Order Re Reasonable Review to Ascertain Decedent's Creditors.  
13

14 DATED this 15th day of May, 2014.



Charles P. Rullman, WSBA No. 42733  
FOSTER PEPPER PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101-3299  
Telephone: (206) 447-4400  
Facsimile: (206) 447-9700  
Email: rullc@foster.com  
Attorneys for Personal Representative  
Jannette M. Weimer

21  
22  
23  
24  
25  
26  
NOTICE OF AFFIDAVIT OF PUBLICATION - 1

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

51371771.1

# Everett Daily Herald

## Affidavit of Publication

State of Washington }

County of Snohomish } ss

Teresa Snyder being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH557911 NO 13-4-00302-9 as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 04/24/2014 and ending on 04/24/2014 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$70.00.

Teresa Snyder

Subscribed and sworn before me on this

24 day of April,  
2014.

Susan L. Stoltz

Notary Public in and for the State of

Washington.

Foster Pepper PLLC | 14204443  
COLLEEN RICKMAN  
NO 13-4-00302-9

\* SUSAN L. STOLTZ \*  
STATE OF WASHINGTON  
NOTARY --- PUBLIC  
My Commission Expires 12-20-2017

No. 13-4-00302-9  
NOTICE FOR PETITION  
FOR ORDER RE:  
REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S  
CREDITORS  
(RCW 11.40.040(3))  
SUPERIOR COURT OF  
WASHINGTON IN AND FOR  
SNOHOMISH COUNTY  
In the Matter of the Estate of  
RICHARD F. BUSS, Deceased.  
PLEASE TAKE NOTICE  
On Friday, May 16, 2014, at  
9:30 a.m., this Court located  
at  
Snohomish County  
Counthouse 2000 Rockefeller  
Avenue Everett, WA 98201,  
will hear the Petition of  
Janette M. Welmer for Order  
re: Reasonable Review to  
Ascertain Decedent's  
Creditors; requesting for an  
Order declaring that the  
Personal Representative has  
made a review, and that any  
creditor not known to the  
Personal Representative is  
not reasonably ascertainable.  
Any person entitled to Notice  
has the right to appear at the  
hearing and be heard on the  
matter by the Court.  
Dated: April 22, 2014  
Foster Pepper PLLC  
CHARLES P. FULLMAN,  
WSBA No. 42733  
Attorneys for Petitioner,  
Janette M. Welmer  
Published: April 24, 2014.

# EXHIBIT G

## Christopher Alston

---

**From:** Charles Rullman  
**Sent:** Friday, April 25, 2014 7:20 AM  
**To:** 'mborde@williamskastner.com'  
**Cc:** Christopher Alston  
**Subject:** Buss Estate: Petition in Snohomish Superior Court  
**Attachments:** 10 32 1 173\_EXCHANGE\_04242014-110740.pdf - Adobe Acrobat Pro.pdf

Mr. Borde,

I am a colleague of Chris Alston and I am assisting in the representation of the Estate of Richard F. Buss. Attached is a courtesy copy of the Calendar Note and Petition for Order Re Reasonable Review to Ascertain Decedent's Creditors filed with the Snohomish County Superior Court on April 22. The Notice of Petition will be published in the newspaper of record for Snohomish County for 20 days and the hearing is scheduled for Friday, May 16, 2014 at 9:30 a.m.

Best regards,

**Chuck P. Rullman | Attorney**

1111 Third Avenue, Suite 3400 | Seattle, WA 98101-3299  
(206) 447-7268 (direct) | [rulc@foster.com](mailto:rulc@foster.com)



FOSTER PEPPER



# EXHIBIT H

Court Commissioner  
Guardianship/Probate Calendar  
Dept. D  
Date of Hearing: May 16, 2014  
Time: 9:00 a.m.

**RECEIVED**

**MAY 14 2013**

**FOSTER PEPPER PLLC**

**SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY**

In the Matter of the Estate of

**RICHARD F. BUSS,**

Deceased.

NO. 13-4-00302-9

**RESPONSE TO PETITION FOR ORDER  
RE: REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S CREDITORS**

Michael P. Klein, Chapter 7 trustee for the bankruptcy estates of Mark and Marna  
McNaughton and The McNaughton Group, LLC (the "Trustee"), responds as follows.<sup>1</sup>

1. Mark and Marna McNaughton filed a voluntary Chapter 7 bankruptcy petition  
on February 28, 2012.<sup>2</sup>

2. Michael P. Klein was appointed Chapter 7 trustee for the McNaughtons'  
bankruptcy estate.

3. Mr. Klein filed a Chapter 7 bankruptcy petition on behalf of The McNaughton  
Group, LLC on March 21, 2012.<sup>3</sup> The McNaughton Group, LLC was wholly owned by Mark

<sup>1</sup> The facts relevant to this Response are alleged in the Complaint that was submitted with Respondent/Trustee's claim and Respondent/Trustee incorporates those factual allegations into this response brief. However, some of those facts are repeated here for the Court's convenience.

<sup>2</sup> Complaint at ¶ 2.1.

<sup>3</sup> Complaint at ¶ 2.1.

**RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 1**

**Williams, Kastner & Gibbs PLLC**  
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Seattle, Washington 98101-2380  
(206) 628-6600

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1 and Marna McNaughton and was engaged in real estate development.<sup>4</sup> Mr. Klein was  
2 appointed trustee for The McNaughton Group, LLC bankruptcy estate.<sup>5</sup>

3 4. The decedent, Richard Buss, was the Chief Financial Officer of The  
4 McNaughton Group, LLC. Mr. Buss also became the Chief Financial Officer for KLN  
5 Construction, Inc., an entity the Respondent/Trustee alleges is a successor to The McNaughton  
6 Group, LLC.<sup>6</sup>

7 5. On July 24, 2012, the decedent, Richard Buss, filed a proof of claim in The  
8 McNaughton Group, LLC bankruptcy case, in the amount of \$275,250.<sup>7</sup>

9 6. The decedent's claim asserts funds were owing to him pursuant to a profit  
10 sharing plan of The McNaughton Group, LLC for 2006. The funds were to be paid on  
11 February 28, 2007. A portion of Buss' 2006 bonus was paid on or about February 28, 2007 but  
12 the remainder was evidenced by a promissory note executed by The McNaughton Group dated  
13 March 1, 2007.

14 7. On January 22, 2010, Buss entered into an agreement with The McNaughton  
15 Group, LLC titled "2006 Bonus Payment and Employee Promissory Note Amendment  
16 Agreement" (the "2010 Agreement"). At that time, the original March 1, 2007 promissory  
17 notes executed in favor of Buss was in default.

18 8. As of January 22, 2010, the outstanding principal balances for the March 1,  
19 2007 promissory note in favor of Buss (due and payable on October 31, 2007) was  
20 \$392,565.74.

21  
22  
23 <sup>4</sup> Complaint at ¶ 3.1.

24 <sup>5</sup> Complaint at ¶ 2.2.

25 <sup>6</sup> Complaint at ¶¶ 3.3, 3.17, 3.18

<sup>7</sup> A copy of the proof of claim filed by the decedent is attached as Exhibit A to the Declaration of Manish Borde in Support of Response to Petition for Order Re: Reasonable Review to Ascertain Decedent's Creditors ("Borde Declaration").

1           9. Pursuant to the 2010 Agreement, The McNaughton Group, LLC agreed to  
2 provide additional security for payment of the outstanding principal balance due under the  
3 March 1, 2007 promissory note in the form of security interests in two asset classes – school  
4 mitigation credits and latecomer's fees.<sup>8</sup>

5           10. The Trustee alleges, among other things, that the perfection of the security  
6 interests in the school mitigation credits and latecomers' fees in favor of Buss were avoidable  
7 transfers under the Bankruptcy Code.

8           11. The McNaughton Group, LLC transferred the school mitigation assets to KLN  
9 Construction, Inc. prior to the bankruptcy.<sup>9</sup> The Trustee alleges that this is an avoidable  
10 transfer. The Buss estate has received payments from KLN Construction, Inc.'s sale of some  
11 of the school mitigation credits pursuant to the ostensible security interest in the school  
12 mitigation credits.

13           12. The Trustee alleges that all payments received as a result of the ostensible  
14 security interest in the school mitigation credits are recoverable under provisions of the  
15 Bankruptcy Code.

16           13. Other key employees of The McNaughton Group, LLC were owed funds  
17 pursuant to the profit sharing plan and they filed claims in The McNaughton Group, LLC  
18 bankruptcy case. This includes Kevin Ballard who became President of KLN Construction,  
19 Inc., as well as Brian Holtzclaw, who was the Chief Legal Officer of The McNaughton Group,  
20 LLC and retained the same title at KLN Construction, Inc.

21  
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23  
24 <sup>8</sup> School mitigation credits can be applied against school mitigation fees imposed on development proposals  
25 within the Everett School District's boundaries for a twenty (20) year period. See Complaint at ¶ 3.21.  
"Latecomers' fees" collected from the owners of properties that are benefited by and connect to the lift station  
constructed by The McNaughton Group, LLC. See Complaint at ¶ 3.23.

<sup>9</sup> Complaint at ¶ 3.31.

1           14. Holtzclaw and Ballard filed claims in The McNaughton Group, LLC bankruptcy  
2 case similar to that of the decedent's.<sup>10</sup>

3           15. Decedent Buss, Ballard and Holtzclaw filed their claims as secured claims.

4           16. Decedent Buss and the Buss estate received payments relating to the 2010  
5 Agreement before and after The McNaughton Group, LLC was filed into bankruptcy.

6           17. Notwithstanding that: (a) Buss received payments on the March 1, 2007  
7 promissory note prior to his death; (b) Buss had been the Chief Financial Officer of both The  
8 McNaughton Group, LLC and KLN Construction, Inc.; (c) the Buss estate continued to receive  
9 payments from KLN Construction, Inc.'s sale of school mitigation credits as a result of the  
10 ostensible security interest; (d) Buss had filed a proof of claim in The McNaughton Group,  
11 LLC's bankruptcy case along with other high level employees that addressed the security  
12 interest in the school mitigation credits and directly related to the payments received by the  
13 Buss estate; and (e) Buss had previously testified in the McNaughton bankruptcy proceeding  
14 regarding pre-bankruptcy transactions, Respondent/Trustee was not provided actual notice  
15 regarding the deadline to file a claim against the probate estate.<sup>11</sup>

16           18. Respondent filed a Creditor's Claim in the above entitled matter on February  
17 26, 2014. Respondent alleges the decedent and the Buss estate received payments subject to  
18 the Trustee's avoidance powers under 11 U.S.C. § § 544, 547, 548, 549 and 550.

19           19. As of April 14, 2014, Respondent is known to the Personal Representative and  
20 therefore is not within the class of "not now known to me" creditors according to paragraph 2  
21 of the prayer of the Personal Representative.

22  
23  
24 <sup>10</sup> Excerpts of the claims filed by Mr. Ballard and Mr. Holtzclaw are attached as Exhibits B and C to the Borde  
25 Declaration.

<sup>11</sup> Excerpt of deposition testimony provided by Richard Buss in the McNaughton bankruptcy case is attached as  
Exhibit D to the Borde Declaration.

RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 4

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1           20.    The Petition is a matter "within the purview of RCW 11.96A.080, 11.96A.030  
2 and 11.40.040(3).

3           21.    A petition made pursuant to RCW 11.96A.020 must be a separate matter as  
4 provided in 11.96A.090 requires a separate cause number.

5           22.    An action brought under RCW 11.96A.090 proceeding requires a Summons as  
6 required by RCW 11.96A.100. The Petition of the Personal Representative was not  
7 accompanied by a Summons.

8           23.    The Petition is brought pursuant to RCW 11.40.040(3) and the presumption  
9 referred to in that section may be rebutted by clear, cogent and convincing evidence.

10          24.    The alleged reasonable diligence of the Petitioner cites no sources other than  
11 those provided for in RCW 11.40.040 and the Personal Representative failed to query or  
12 investigate (i) any bankruptcy file, paperwork of correspondence relating to The McNaughton  
13 Group, LLC given The McNaughton Group, LLC bankruptcy was filed within approximately  
14 one year prior to the death of the decedent, and (ii) the decedent's computer and emails.

15          25.    The Personal Representative in the exercise of reasonable diligence knew or  
16 should have known or reasonably discovered the Respondent, particularly since: (a) the  
17 Personal Representative was receiving payments from the sale of an asset that was the subject  
18 of a proof of claim filed by the decedent in The McNaughton Group, LLC bankruptcy; (b) the  
19 asset had been transferred by The McNaughton Group, LLC to KLN Construction, Inc. and  
20 Buss had been employed at both; and (c) Buss had previously testified on behalf of KLN  
21 Construction, Inc. in the McNaughton bankruptcy proceeding. Additionally, the Personal  
22 Representative has not disclosed that she reviewed communications among Ballard, Holtzclaw  
23 and Buss relating to the bankruptcy and the individuals' claims in the bankruptcy.

24          26.    RCW 11.96A.115 provides that discovery should be set by the court. Such  
25 discovery would allow Respondent to develop clear, cogent and convincing evidence to rebut

RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 5

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1 the presumption contained in RCW 11.40.040 and at a minimum the Court should order: (i)  
2 forensic review of decedent's computer and emails, and (ii) the Respondent should be  
3 permitted to depose the Personal Representative regarding the bankruptcy file relating to the  
4 decedent's estate and other matters relative to the exercise of reasonable diligence by the  
5 personal representative.

6 27. RCW 11.96A.020 vests plenary power with the Court to administer and settle  
7 all matters concerning the estates and assets of deceased persons. RCW 11.96A.300 sets forth  
8 a procedure for mediation. The Trustee has entered into tolling agreements with the Personal  
9 Representative, Mr. Holtzclaw and Mr. Ballard for the purpose of attempting to mediate the  
10 Trustee's claims. The Trustee, Mr. Holtzclaw and Mr. Ballard are currently attempting to  
11 schedule a mediation. In the alternative to directing discovery to proceed regarding the  
12 Personal Representative's exercise of reasonable diligence, the Court should direct the Buss  
13 estate to attend a mediation.

14 WHEREFORE, Respondent requests the Court to set a discovery schedule to permit  
15 Respondent to develop evidence to rebut the presumption of reasonable diligence of the  
16 personal representative as referenced in RCW 11.40.040. In the alternative, Respondent  
17 requests the Court direct the parties to attend a mediation in an effort to resolve the dispute.

18 DATED this 14th day of May, 2014.  
19  
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RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 6

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Manish Borde, WSBA #39503  
Attorneys for Creditor Michael P. Klein,  
Chapter 7 Trustee for the Bankruptcy Estates of  
The McNaughton Group LLC and Mark and  
Marna McNaughton  
WILLIAMS, KASTNER & GIBBS PLLC  
601 Union Street, Suite 4100  
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Telephone: (206) 628-6600  
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mborde@williamskastner.com

RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 7

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Seattle, Washington 98101-2380  
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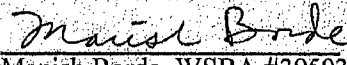
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**CERTIFICATE OF SERVICE**

The undersigned certifies, under penalty of perjury of the laws of the State of Washington, that on the below date, I caused to be served via legal messenger a true and correct copy of the foregoing document to:

Charles P. Rullman, WSBA #42733  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101-3299  
Attorneys for Petitioner, Janette M. Weimer

DATED this 14<sup>th</sup> day of May, 2014.

  
Manish Borde, WSBA #39503  
Attorneys for Creditor Michael P. Klein,  
Chapter 7 Trustee for the Bankruptcy Estates of  
The McNaughton Group LLC and Mark and  
Marna McNaughton  
WILLIAMS, KASTNER & GIBBS PLLC  
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RESPONSE TO PETITION FOR ORDER RE: REASONABLE  
REVIEW TO ASCERTAIN DECEDENT'S CREDITORS - 8

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# EXHIBIT I

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7 SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

8 In the Matter of the Estate of

9 RICHARD F. BUSS,

10 Deceased.

No. 13-4-00302-9

**REPLY BRIEF IN SUPPORT OF  
PETITION FOR ORDER RE  
REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S  
CREDITORS (RCW 11.40.040(3))**

Hearing Date: Friday, May 16, 2014  
Hearing Time: 9:00 a.m.

11  
12  
13 **I. INTRODUCTION**

14 The Personal Representative for the Estate of Richard F. Buss, Janette M. Weimer (the  
15 "PR"), through her undersigned counsel, submits this Reply in support of her Petition for Order  
16 Re Reasonable Review to Ascertain Decedent's Creditors (the "Petition"). Respondent Michael  
17 P. Klein, the Chapter 7 trustee for the bankruptcy estates of Mark and Marna McNaughton and  
18 The McNaughton Group, LLC (the "Bankruptcy Trustee" for the "McNaughton Bankruptcy  
19 Estate"), submitted the only response to the Petition. The PR requests that the Court rule that  
20 any creditors not identified by the PR through her diligent search of the Decedent's records were  
21 not reasonably ascertainable, including the McNaughton Bankruptcy Estate.

22 At the time of his passing in February 2013, the Decedent was a claimant against the  
23 McNaughton Bankruptcy Estate based on a 2007 promissory note. The Decedent had  
24 participated in the bankruptcy proceedings as a witness, but the Bankruptcy Trustee never  
25 disclosed that he might be the subject of a future avoidance action. Nonetheless, on February 26,  
26

PETITION FOR ORDER RE REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S CREDITORS (RCW 11.40.040(3)) - 1

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PHONE (206) 447-4400 FAX (206) 447-9700

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1 2014, the Bankruptcy Trustee filed a Creditor's Claim alleging that the Decedent and his Estate  
2 received payments subject to the Trustee's avoidance powers. The Bankruptcy Trustee's  
3 Creditor's Claim was untimely, as it was submitted more than 14 months after the PR published  
4 a notice to potential creditors.

5 The PR attested to the sufficiency of her investigation for potential creditors and her  
6 affidavit created a presumption of reasonable diligence. See RCW 11.40.040(2). She reviewed  
7 the Decedent's correspondence and financial records (including personal financial statements,  
8 loan documents, checkbooks, bank statements, and income tax returns) that were in her  
9 possession or reasonably available to her. None of these materials stated directly or implicitly  
10 that the bankruptcy estate for McNaughton Bankruptcy Estate held claims against the Decedent –  
11 and the Bankruptcy Trustee has offered no clear, cogent and convincing evidence to the contrary.

12 The Court should deny the Bankruptcy Trustee's request for discovery and rule that any  
13 creditors not identified by the PR through her diligent search of the Decedent's records were not  
14 reasonably ascertainable, including the McNaughton Bankruptcy Estate

## 15 **II. UNDISPUTED FACTUAL BACKGROUND**

### 16 **A. The Personal Representative Diligently Investigated the Decedent's Creditors.**

17 The Decedent died on February 8, 2013. The Decedent's Will was admitted to probate  
18 on March 1, 2013 and the PR was appointed on the same date.

19 On March 13, 2013, the PR caused a *Probate Notice to Creditors* to be published in The  
20 Tribune, a newspaper that has been approved as a legal newspaper by this Court. (Petition, ¶ 2.)  
21 Thereafter, on December 4, 2013, the PR caused an *Affidavit of Publication* to be filed,  
22 confirming that the Probate Notice to Creditors was published for more than six months. (*Id.*)  
23 On December 26, 2013, the PR filed an Affidavit confirming that, in accordance with RCW  
24 11.40.040, she exercised reasonable diligence to discover within the four-month time limitation  
25 (expiring on July 13, 2013) all reasonably ascertainable creditors of the Decedent. (*Id.*)  
26

1 **B. The Bankruptcy Trustee Waited a Year after the Decedent's Death to Assert a**  
2 **Creditor's Claim.**

3 On March 21, 2012, The McNaughton Group, LLC filed for bankruptcy. (Response, ¶  
4 3.) Decedent, who had served as Chief Financial Officer of the The McNaughton Group, LLC  
5 and its successor, KLN Construction, Inc., filed a proof of claim for \$272,250. (*Id.*, ¶ 5.)  
6 Decedent's claim asserted that funds were owing to him pursuant to a profit sharing plan with  
7 The McNaughton Group, LLC, which was later reduced to a promissory note. (*Id.*, ¶ 6.)

8 On February 26, 2014, seven months after the time for making creditor's claims expired,  
9 the Bankruptcy Trustee filed a Creditor's Claim. (Response., ¶ 18.) The Bankruptcy Trustee  
10 alleges that the Decedent and his Estate received payments that are subject to the Trustee's  
11 avoidance powers. (*Id.*)

12 **III. LEGAL ARGUMENT**

13 **A. The McNaughton Bankruptcy Estate Was Not A Reasonably Ascertainable**  
14 **Creditor.**

15 The PR seeks a declaration that any creditors not identified by to the PR through her  
16 diligent search were not reasonably ascertainable, including the McNaughton Bankruptcy Estate.  
17 RCW 11.40.040(3). A reasonably ascertainable creditor is a creditor that "the personal  
18 representative would discover upon exercise of reasonable diligence." RCW 11.40.040(1). The  
19 personal representative is deemed to have exercised reasonable diligence "upon conducting a  
20 reasonable review of the decedent's correspondence, including correspondence received after the  
21 date of death, and financial records, including personal financial statements, loan documents,  
22 checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably  
23 available to the personal representative." RCW 11.40.040(1). The personal representative may  
24 evidence such a review by filing an affidavit with the court regarding the search conducted.  
25 RCW 11.40.040(3). The filing of such an affidavit creates a presumption of reasonable diligence.  
26 RCW 11.40.040(2). Moreover, any creditor not ascertained during this review is presumed to

1 have not been reasonably ascertainable—a presumption that may be rebutted only by clear,  
2 cogent, and convincing evidence. RCW 11.40.040(2).

3 The Bankruptcy Trustee claims that the PR should have identified the McNaughton  
4 Bankruptcy Estate as a reasonably ascertainable creditor for the following reasons: (1) the  
5 Decedent received payments under the promissory note prior to his death; (2) the Decedent's  
6 Estate continued to receive payments on the promissory note after the Decedent's death; (3) the  
7 Decedent had been an officer of The McNaughton Group, LLC; (4) the Decedent had filed a  
8 claim against the McNaughton Bankruptcy Estate; and (5) the Decedent had given deposition  
9 testimony in proceedings involving the McNaughton Bankruptcy Estate. (Response., ¶ 17.)  
10 However, these facts merely establish that the Decedent (and then his Estate) was a creditor of  
11 the McNaughton Bankruptcy Estate – not the reverse. Neither the Decedent nor his Estate was  
12 given written or oral notice that the Bankruptcy Trustee would pursue an avoidance action –  
13 particularly one that would not be filed until a year after the Decedent's death.

14 The Bankruptcy Trustee has not provided clear, cogent, and convincing evidence to rebut  
15 the presumption that the McNaughton Bankruptcy Estate was not a reasonably ascertainable  
16 creditor. The Court should therefore grant the PR's Petition.

17 **B. The Court Should Deny the Bankruptcy Trustee's Request for Discovery.**

18 The Bankruptcy Trustee requests discovery so it can look for unspecified evidence that  
19 the McNaughton Bankruptcy Estate was a reasonably ascertainable creditor. Such discovery is  
20 not available as a matter of right and it should be denied. *See* RCW 11.96A.115; *see also* RCW  
21 11.96A.100(7) (TEDRA issues may be decided by affidavit).

22 RCW 11.96A.115 states that discovery “shall be permitted *only*” in certain situations,  
23 including when “[a] judicial proceeding ... places one or more specific issues in controversy.”  
24 (Emphasis added). The statute does not indicate that discovery is always required whenever  
25 specific issues are placed in controversy. *See In re Estate of Fitzgerald*, 172 Wash. App. 437,  
26 447, 294 P.3d 720, 725 (2012) review denied, 177 Wash. 2d 1014, 302 P.3d 181 (2013)

PETITION FOR ORDER RE REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S CREDITORS (RCW 11.40.040(3)) - 4

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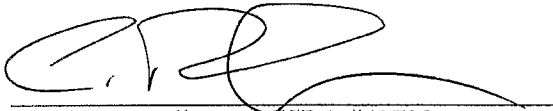
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1 (affirming denial of continuance for additional discovery where affidavits conclusively  
2 demonstrated there was no issue of fact as to knowledge of creditor; and characterizing the  
3 additional discovery request as a "mere speculation and a fishing expedition"). Here, the  
4 discovery sought by the Bankruptcy Trustee has already been addressed by the PR in her  
5 Affidavit, where she attested to her review of all relevant documents and not identifying the  
6 McNaughton Bankruptcy Estate as a potential creditor. *Id.* at 447. The presumption of diligence  
7 that attaches to the PR's Affidavit should not be disregarding to allow the Bankruptcy Trustee to  
8 conduct a fishing expedition in hope of resuscitating a time-barred claim.

9 **IV. CONCLUSION**

10 For all of the foregoing reasons, the PR requests that the Court rule that any creditors not  
11 identified by the PR through her diligent search were not reasonably ascertainable, including the  
12 McNaughton Bankruptcy Estate.

13 DATED: May 15, 2014

14   
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23 the Estate of Richard F. Buss, Janette M.  
24 Weimer

# EXHIBIT J



FILED

2014 MAY 23 AM 9:40

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

IN THE MATTER OF THE ESTATE OF      No. 13-4-00302-9

RICHARD F. BUSS,

Deceased.      ~~PROPOSED~~ ORDER GRANTING  
PETITION FOR ORDER RE  
REASONABLE REVIEW TO  
ASCERTAIN DECEDENT'S  
CREDITORS (RCW 11.40.040(3))

THIS MATTER came before the Court on the Petition For Order Re Reasonable Review To Ascertain Decedent's Creditors submitted by Personal Representative for the Estate of Richard F. Buss, Janette M. Weimer (the "PR"). The Court has considered the following submissions:

1. PR's Petition For Order Re Reasonable Review To Ascertain Decedent's Creditors;
2. Response to Petition For Order Re Reasonable Review To Ascertain Decedent's Creditors;
3. Declaration of Manish Borde In Support of Response to Petition For Order Re Reasonable Review To Ascertain Decedent's Creditors; and
4. Reply Brief In Support of Petition For Order Re Reasonable Review To Ascertain Decedent's Creditors.

[PROPOSED] ORDER - 1

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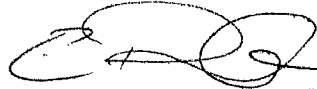
1 Being fully advised, it is hereby **ORDERED** that the PR's Petition For Order Re  
2 Reasonable Review To Ascertain Decedent's Creditors is GRANTED as follows: Any creditors  
3 not identified by the PR through her diligent search of Decedent Richard F. Buss' records were  
4 not reasonably ascertainable, including the Bankruptcy Estate of The McNaughton Group, LLC  
5 and any party acted on its behalf, including the Bankruptcy Trustee.

6 DATED this 23 day of May, 2014.

7  
8 Virginia Lopez  
9 COMMISSIONER FOR SNOHOMISH COUNTY  
Pro tem

10 Presented by:

11 FOSTER PEPPER PLLC

12 

13 Charles P. Rullman, WSBA No. 42733  
14 Attorneys for the Personal Representative  
for the Estate of Richard F. Buss, Janette M. Weimer

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26  
[PROPOSED] ORDER - 2

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